

By The Authority given by the Lisbon Town Ordinances (Chapter 2, Section 2 – 519 (d)) , the Planning Board establishes the following “Rules” of the Planning Board Which hereafter shall be known as the

Planning Board Bylaws

Town of Lisbon, Maine

Established October 25, 2012

Article I– General

1.1 Purpose

The purpose of these Bylaws is:

- To provide the Planning Board with a clear and specific legal foundation to clarify its policies, objectives and methods;
- To provide a record for Planning Board members to use in keeping their activities consistent and legal;
- To provide a publically accessible record outlining Planning Board procedures and policies, and to inform residents and the public of the Board’s general rules and operating expectations.

1.2 Effective Date

- These bylaws shall be in effect immediately upon their adoption by the Town of Lisbon Planning Board.
- The effective date of these bylaws is October 25, 2012

1.3 Jurisdiction

- The provisions of these bylaws shall pertain exclusively to the Town of Lisbon Planning Board (herein known as “the Board”).
- The provisions of these bylaws shall not be construed to overrule or annul the provisions of other ordinances or regulations in effect in the Town of Lisbon.

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- The provisions of these bylaws represent a third level of procedural rule. The first level of rules shall be the State of Maine Constitution and Maine Revised Statutes Annotated. The second level of rules shall be the Charter, Ordinances and Regulations of the Town of Lisbon, Maine. These bylaws shall not be considered as to conflict with either of the first two levels of rules. Where there may be the appearance of conflict, one or both of the first two levels shall prevail.

1.4 Adoption and Amendments

- These bylaws shall be adopted by the Board and may be amended, supplemented or expanded by the Board through the following procedure:
 - The Board shall present the proposed bylaws and/or proposed change or amendment to the Lisbon Town Council at least thirty days before the Board meeting at which said bylaws or amendment thereto shall be considered for final adoption.
 - The Town Council shall investigate the bylaws or amendments thereto to such extent as it may deem appropriate and submit its general opinion for consideration by the Board.
 - These bylaws may be adopted by a majority vote of the Board. If the Town Council fails to provide guidance or recommendations within the specified time period, the Board may proceed to adopt its rules without further guidance.

1.5 Severability

- The invalidity of any section or provision of these by laws shall not be held to invalidate any other section or provision of these bylaws.

1.6 Waiver of Rules

- In the case of extenuating circumstances, the Board may waive any provision of these bylaws by majority vote. The reason or reasons for waiving any portion of the Bylaws shall be properly recorded in the minutes of the meeting where such waiver occurs.

Article 2- Planning Board Membership and Staffing

2.1 Establishment and Membership¹

- The Town of Lisbon Charter establishes the Planning Board I Article V, and it is further defined by Lisbon Town Ordinance.

¹ Reference Town of Lisbon, Maine, Code of Ordinances: Part I, Chapter 2 (Administration), Article IV (Boards and Commissions), Division 4 (Planning Board).

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- The Board shall consist of five members serving staggered terms of three (3) years, appointed by the Town Council. Each Board member shall be a qualified voter of the Town.
- The Lisbon Town Council has, by ordinance, provided for the appointment of two associate members of the Board.
- When there is a permanent vacancy, the Town Council shall appoint a person to serve for the unexpired term within 60 days.
- Neither a municipal officer, nor a Town of Lisbon Appeals Board member may serve as member or associate member of the Board.
- A vote of the Board quorum may direct the attention of the Town Council to conditions suggesting the Board appointment should be terminated for just cause as defined in the Town Ordinances governing Boards. The Town Council may remove any member for just cause.
- An Associate member may and should attend all meetings of the Board and participate in its proceedings but may vote only when he/she has been designated by the chair to sit for a member. When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the chair, the chair shall designate an associate member to sit in his stead.
- Attendance and Dismissal²
 - When a member is unable to attend a scheduled Board Meeting, notification will be made to the Board Chair, in advance, in order to facilitate the work of the Board at that meeting. If an extended absence is necessary, that member will discuss it with the Board in advance to the degree possible.
 - The Secretary will record attendance at each meeting.
 - A member who fails to attend three consecutive meetings without acceptable reason, fails to attend 75% of all regular meetings in a calendar year or is convicted of a crime or offense which is reasonably related to his or her ability to serve, may be removed by a vote of the Town Council for just cause by an affirmative vote of at least five of its members. The Planning Board will recommend such action to the Town Council by a majority vote.

2.2 Chair and Vice Chair

- The Board shall elect annually by majority vote, one of its members as Chairman and another member to serve as Vice Chairman for a one-year term. The annual election of officers shall occur at the first regular meeting of the Board after the beginning of the Town of Lisbon Fiscal Year (currently July).

² Not established in existing Town Ordinances.

- The term of the Chair and Vice Chair shall commence immediately and during the same meeting after the election.
- The Chair may not serve more than two consecutive one year terms.
- In the temporary absence or disability of the Chairman and Vice Chairman, the Board shall elect by a majority vote a Chairman Pro tempore from among its members. The Chairman Pro tempore shall exercise the powers of Chairman during the absence or disability of the Chairman or Vice Chairman.

2.3 Conflict of Interest – direct or indirect pecuniary interest

- If any Board member personally or that of his legal partner or spouse has a substantial financial interest, direct or indirect, in any contract with the Town or in the purchase or sale of any land, material, supplies or service to the Town or to a contractor supplying the Town, that person shall make known that interest and shall refrain from voting or otherwise participating in his or her capacity on the Board. In like fashion, any such member who may have a direct or perceived interest in property being considered for any action by the Board should also refrain from participation. That member shall step away from the Board for any vote or discussion concerning such matters but shall be able to participate as is allowed for any member of the general public.

2.4 Municipal Staff to the Planning Board³

- The Town Manager shall appoint a member of the town staff to act as a Secretary for the Board for the entire year. This shall be in addition to any involvement of the Codes Enforcement Officer as required by State of Maine Statutes.
- The Secretary shall attend all meetings of the Board and shall take all minutes as appropriate.
- The Code Enforcement Officer shall be responsible for assembling the agenda for meetings and for disseminating any correspondence required by the Board.
- The Code Enforcement Officer will coordinate with the Chairman for the agendas and public or abutter notices for regular, special, and emergency meetings and workshops for the Board.

Article 3 - Board Duties and Responsibilities

3.1 Responsibilities of the Board

³ Not established in Town Ordinances.

- The Board shall prepare and maintain the Comprehensive Plan as defined by 30-A M.R.S.A. § 4324 ⁴. The Board shall prepare and recommend adoption or amendments to the Comprehensive Plan to the Lisbon Town Council.
- The Board shall perform such duties and exercise such powers as are provided by town ordinance and the laws of the State of Maine.⁵
- The Board must develop and maintain all other land use ordinances for the Town of Lisbon, listed as follows:
 - Zoning Regulations
 - Subdivision Regulations
 - Site Plan Review Regulations
 - Floodplain Management Ordinances
 - Shoreland Zoning Ordinances
 - Other regulations and ordinances as may pertain to future land use development.

Article 4 - Board Meeting Procedures and Rules

4.1 Meeting Schedule and Conduct

4.1.1 Meeting Occurrence

- Regular meetings shall be held on the 2nd and 4th Thursdays of each month at 7PM in the municipal meeting room of the Town Office Building unless otherwise designated.
- The meeting on the second Thursday of the month may be eliminated by unanimous consent of the voting members present at the meeting immediately prior to the meeting in question. The date and time of any meeting may be changed by the same procedure, providing that at least one meeting per month is conducted at the regular 2nd or 4th Thursday. The Chair and the Codes Enforcement Officer shall make the decision and post notice if no meeting is to be held during the month. Postponement of any meeting shall be the responsibility of the Chairman.

4.1.2 Conduct of meetings

- All meetings shall be conducted according to Robert's Rules of Order Newly Revised in all cases to which they are applicable and in which they are

⁴ Reference Town of Lisbon, Maine, Code of Ordinances: Part I, Chapter 2 (Administration), Article IV (Boards and Commissions), Division 4 (Planning Board), Section 2-517.

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neither inconsistent with these bylaws nor inconsistent with the knowledge of such rules by the Chair.

- All meetings and workshops shall be open to the public except for executive sessions.
- A quorum is required in order to conduct a meeting in all matters except for postponement and adjournment. A quorum shall consist of three members or associate members for the transaction of all official business.

4.1.3 Conversations outside of duly scheduled meetings:

- Note- Ex Parte Communications –Is “an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given...” and shall be avoided. This shall include any email correspondence between Board members. All Board members shall refrain from discussing pending or potential applications with each other outside of the Board meetings. Communications with residents regarding pending applications or potential applications shall also be avoided. Where communications take place inadvertently, they must be disclosed completely to the Board in the next scheduled public session.
- Any gathering of three members (whether regular or associate) outside of scheduled meetings where any Planning Board case matters are discussed, shall be avoided as it would likely be considered Ex Parte Communication. Any inadvertent gathering shall be reported publicly and completely at the next scheduled meeting for purposes of proper disclosure.
- No Board member may conduct site visits to project locations. All such visits must be conducted as part of a scheduled Planning Board Site Visit.
- No determination of the Board shall be made except in a duly called regular or special meeting and every decision or determination of the Board shall be filed as a part of the minutes of the meeting.
- A duly called and scheduled site visit shall be considered a special meeting. Minutes of such meeting shall be kept by the Chair or Vice Chair in his absence.

4.1.4 Voting

- Board decisions shall be voted by a majority vote of those present after a motion has been duly made and seconded. The secretary shall record all motions and the vote thereon. F
- Final decisions on the Comprehensive Plan must be voted in the affirmative by a minimum 2/3 majority of the total board membership.
- No motion shall be considered passed in any case unless at least three affirmative votes are cast.

4.1.5 Reconsideration

- Any decision may be reconsidered by the Board upon request of a party to the decision, if requested by a Board member, the applicant or other affected party. A vote to reconsider, and the action taken on that reconsideration if initiated, requires an affirmative majority of the Board, and must occur and be completed by the next regularly scheduled meeting following the original decision. The Board may conduct additional hearings and receive additional evidence and testimony as provided elsewhere in this section.

4.1.6 Meeting Agendas

- The Agenda for each meeting for the Planning Board shall be prepared by the code enforcement officer as directed by the Chairman as he or she considers input from Planning officials of the town. The deadline for the final agenda shall be the Friday immediately preceding the scheduled meeting or workshop. This deadline does not supersede any requirements for public posting or advertizing of meetings or hearings.
- Additional agenda items may be introduced by any member of the Board during the “New Business” portion of a regular meeting. Such item may be considered upon unanimous consent of all of those members attending.
- The format for each meeting (whether regular or special) shall be as follows:
 - Call to Order
 - Call for Attendance
 - Summary of Meeting Rules (to be printed on the back of agendas)
 - Reading of the minutes (unless waived) and voting
 - Public Hearing, if any
 - Unfinished Business – anything to be considered from a previous meeting
 - New Business - new cases (may or may not be those for which a hearing was held on the same agenda) – or pertinent agenda items to be considered
 - Codes Enforcement Business
 - Planning Associate Business
 - Other Business
 - Executive session, if any
 - Adjournment – including “Adjourn to Workshop” if a regular Board meeting is to be followed by a workshop session.

- The Chair may change the order of business for the current meeting upon a majority vote of the Board.

4.2 Public Participation at Board Meetings

4.2.1 Rules of Public Participation

- All comments to the Board and from the Board shall be made through the Chair. The Chair is responsible for moderating the Board's discussion, and discussion and comments from the public or applicants, in order to allow for appropriate exchange of information in a manner that complies with the Rules of Decorum stated in these bylaws.
- Public participation during regular meetings is allowed only after introduction of an agenda item and appropriate motions and time for explanation and Board member questions. (See also 4.2.4 Public Hearings, below.) The public may be allowed to comment on that agenda item at the discretion of the Chair. During that period, the public may address the agenda item only and each participant shall be limited two minutes. Each participant may address the Board only one time unless requested by the Chair to comment further, and the Chair may limit time for comments to no more than ten minutes in total on an agenda item. A member of the public who wishes to comment on an item not on the agenda may be allowed to speak during the "Other Business" portion of the agenda.
- The meeting rules for Board meetings shall be printed on the back of each meeting agenda.
- Any member of the Board, the public, or an applicant who cannot comply with the ruling of the Chair or the Rules of Decorum in these bylaws during a Board meeting waives their right to participate in that meeting, and shall be asked to leave the meeting.

4.2.2 Rules of Decorum for Public Meetings

- All Board meetings shall be conducted in such a manner as to complete within two and one-half (2.5) hours of commencement. The board, by unanimous consent, decides to extend a meeting but only at the point where the meeting can be concluded within another hour. Any action after that point requires a tabling or postponing order.
- During Workshops – the attending public may not participate unless the Chair allows or requests such comment.
- During Hearings – the attending public may speak only in accordance with the specific rules set up for hearings.

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- During Site Visits – This is a special meeting in all respects except that the public is not allowed to participate. Although the public is allowed to be present, comments and explanations will only be accepted by Board members and an applicant or agents representing an applicant. Only participant comments may be considered in any notes taken for minutes of such meeting.

4.2.3 Executive Sessions

- Executive sessions shall only be held within the bounds of the stipulations required by the Maine Right to Know Act. These shall be announced, moved, seconded and voted by a majority of members as per the stipulating statute hearings.

4.2.4 Public Hearings

- The Board shall hold a public hearing whenever it deems necessary or as required by MSRA REVISED STATUTES or local ordinance.
- Public hearings shall be advertised twice in newspapers of general local circulation, the first notice published at least seven days prior to and not more than fourteen days prior to the date of said hearing. The cost of advertising for public hearings shall be paid by the applicant involved with such hearing.
- The advertisement of the hearing shall state the general nature and location of the question involved.
- Any person may appear in person or by agent at the hearing.
- Although not a legal requirement, it is strongly recommended that the applicant involved with the hearing appear in person or by agent at the hearing.
- Orderly procedure shall be maintained. The Board Chair shall preside and all persons shall abide by the orders of the Chair.

4.2.5 Procedure for a Planning Board Public Hearing

- Hearings shall begin with an explanation by the Chair of the process about to begin by summarizing the items listed herein including that all matters are conducted through the Chair, and that the public must comment only when specifically allowed. The chair must emphasize that no decisions are made during the hearing and the process may not conclude during the current meeting. Finally, the Chair will state that order must be maintained and is required of all participants.
- The hearing will be declared open, stating the specific case number and time the hearing was opened.

- The Chair will call for a Presentation by the applicant or representative or attorney and witnesses without interruption.
- Clarifying questions will be allowed through the Chair to the applicant by Board members and people who will be directly affected by the project (e.g., abutters) and requests for more detailed information on the evidence presented by the applicant.
- The Chair will call for presentations by abutters or others, their attorneys and witnesses, who will be directly affected by the project.
- Clarifying questions will be allowed through the Chair, by the applicant and Board members to the people directly affected and the witnesses who made presentations.
- Rebuttal statements may be presented by any of the people who testified previously.
- Comments or questions by other interested people in the audience will be allowed, with questions from the applicant or Board and rebuttal as appropriate.
- The Chair will declare the hearing closed, stating the time of close.

4.3 Board Decision Making Process (*From the MMA handbook*)

4.3.1 The Board shall consider the following items for reviewing evidence:

- Does the board still believe that it has authority to make a decision on the application under current ordinance or statute?
- What does the ordinance/statute require the applicant to prove?
- Does the ordinance/statute prohibit or limit the type of use being proposed?
- What factors must the board consider under the ordinance/statute in deciding whether to approve the application?
- Has the applicant met his or her burden of proof, i.e., has the applicant presented all the evidence which the board needs to determine whether the project will comply with every applicable requirement of the ordinance/statute? Is it outweighed by conflicting evidence?
- To what extent does the ordinance/statute authorize the board to impose conditions on its approval?

4.3.2 The following shall be the basis for the Board's decision:

- The decision must be based solely on whether the applicant has met the burden of proof and complied with the provisions of the statute/ordinance. It should not be based on public opposition or support or on members' general opinion.

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- Any “Ex Parte” communications or any information gained from outside the meeting/hearing may not be held as evidence.
- Evidence must be substantial, i.e. “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
- The Board has the inherent authority to attach conditions to its approval of an application. Any conditions must be reasonable and must be directly related to the standards of review governing the proposal.
- The Board may not deny an application based on deed restrictions if the use would otherwise be in compliance with the applicable ordinance/statute.
- The Board may base its decision on non-expert testimony in the record if it finds that testimony more credible than expert testimony presented on the same issue.
- Care will be taken when Board members who may miss some or all of the meetings in which the Board discussed a particular application. A decision to recuse a member may be appropriate for final voting. If the Board member is able to certify that he/she is sufficiently prepared to make a decision based upon reading or studying the official record and the Board agrees by unanimous consent, that member may be allowed to vote on the application.
- It should be noted that if a party to the proceedings has any objections of procedures or proposed findings by the Board, he/she should raise them so that the Board has a chance to consider them and address them in its decision. Failure to raise objections before the Board’s decision will prevent that person or any other party from making those objections in an appeal.

4.3.3 Final Decisions

- When taking a final vote, the Board shall prepare a written statement of the “Findings of Fact” which will appear in the written record and a written explanation of the “conclusions of law” which it has drawn about whether the facts show that the project is in compliance with the ordinance/statute. The conclusion shall address each standard of the ordinance/standard as a sort of checklist in its conclusion.
- The final vote on an application need not be completed on the night of consideration at hearing or meeting absent any deadlines imposed by applicable statute. The Board must be mindful of statutory deadlines and ensure that it assembles in sufficient time to make such final decision.